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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,437	03/30/2004	Eric C. Smith	82816	5445
23641	7590	11/09/2006	EXAMINER	
BARNES & THORNBURG LLP 600 ONE SUMMIT SQUARE FORT WAYNE, IN 46802			NGUYEN, TUAN N	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 11/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/814,437

Applicant(s)

SMITH, ERIC C.

Examiner

Tuan N. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 8-22 is/are pending in the application.
- 4a) Of the above claim(s) 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-11 and 13-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/1/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species I: Fig. 2 in the reply filed on 4/28/06 is acknowledged. The traversal is on the ground(s) that only the drain adaptor is different between Species I and Species II. This is not found persuasive because not only the drain adaptor is different but handle is different as well. Accordingly, claim 12 has been withdrawn from further consideration. There is no allowable linking generic claim; therefore, the species restriction is maintained.

The requirement is still deemed proper and is therefore made FINAL.

Claim Objections

2. Claim 4 is objected to because of the following informalities: "selectably" in line 2 should be --selectively--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear as to which structure is being claimed in claim 11.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5, 8-11 and 13-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Balazs (5,522,094).

In regard to claim 1, Balazs discloses a hand-actuated piston plunger (Fig. 1) comprising a vessel member (12) having a first vessel end and second vessel end, the vessel member further including a hollow vessel interior; a drain adapter (44) associated with the first vessel end, the drain adapter including an adaptor opening which facilitates selective flow of fluid relative to the vessel interior, the drain adapter being shaped to facilitate insertion thereof into a plumbing drain; a plunger piston (16) slidably mounted within the vessel interior, the plunger piston being movable relative to the drain adaptor; and a piston actuator having a first actuator end and a second actuator end, the first actuator end being operably associated with the plunger piston, the second actuator end extending outside of the vessel interior, the piston actuator being configured for facilitating selectable movement of the plunger piston within the vessel (see Fig. 1 and col. 5, line 6+).

In regard to claim 2, the vessel interior, through a combined operation of the plunger piston and the piston actuator, is configured for selectively receiving clog fluid therewithin from a clogged plumbing vessel (col. 5, line 6+).

In regard to claim 3, the vessel interior is sized so as to be large enough to hold an amount of the clog fluid suitable for effectuating plunging of a clog within the clogged plumbing vessel.

In regard to claim 4, the plunger piston and the piston actuator are together configured so as to be selectively movable in each one of a fluid intake direction and a fluid expulsion direction, a movement in a fluid intake direction facilitating an intake of the clog fluid into the vessel interior, a movement in the fluid expulsion direction promoting an expulsion of the clog fluid therefrom (col. 5, line 6+).

In regard to claim 5, the plunger piston, the vessel interior, and the first vessel end together inherently define a variable fluid volume within the vessel member, the variable fluid volume being dependent upon a positioning of the plunger piston.

In regard to claim 8, the hand-actuated piston plunger further comprises at least one of: an actuator handle (20) operably connected to the piston actuator proximate the second actuator end; and a vessel handle (the second end of the cylinder about 34) being operably connected to the vessel member.

In regard to claim 9, the hand-actuated piston plunger further comprises at least one of: a first limit stop (the bottom flange where 22 is pointing) associated with the first vessel end, the first limit stop being configured for preventing movement of the plunger piston out of the vessel member through the first vessel end; and a second limit stop (the top flange about 34) associated with the second vessel end, the second limit stop being configured for preventing movement of the plunger piston out of the vessel member through the second vessel end.

In regard to claim 10, the drain adapter (44) is selected from the group consisting of one-of conically shaped and frusto-conically shaped

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In regard to claim 11, the plunger is configured so as to promote at least one of quick and selective disassembly of portions thereof.

In regard to claims 13-20, the limitations as claimed have been addressed above.

In regard to claim 21, the drain adapter is formed from an elastomeric material (col. 1, line 64+).

In regard to claim 22, the vessel member is appear to be formed from plastic (see cross-hatching of Fig. 1).

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-5, 8-11 and 13-22 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the amended claims 1 and 3-9 of copending Application No. 11/402,708. Although the conflicting claims are not identical, they are not patentably distinct from each other

because the claimed limitations of the instant application are covered by claims 1 and 3-9 of copending Application No. 11/402,708.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion


9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kennedy et al., Lee, Reid, and Ruo disclose other hand-actuated piston plungers.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Tuan Nguyen
Primary Examiner
Art Unit 3751
11/8/06

TN